



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-T-S-F- LLC

DATE: MAY 27, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a clothing store, seeks to temporarily employ the Beneficiary as an “administrative services manager” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition. The Director concluded that the position offered to the Beneficiary does not qualify as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits evidence previously submitted with the initial petition and in response to the Director’s request for evidence (RFE), and asserts that the Director erred in finding that the proffered position is not a specialty occupation.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as an “administrative services manager.” In response to the RFE, the Petitioner provided the following job duties for the position, along with the approximate percentage of time the Beneficiary will spend on each duty (verbatim):¹

- Maintain accounts receivable, accounts payable and financial reports (as required by owners) – 20% (accounting)
- Manage company’s website and all of its functions 20% (computer software)
- Communicate with customers regarding their quotes, contracts, orders, payments, etc. – 15% (business)
- Keep track of inventory (via computer system) and after consulting with owners place inventory orders and ensure their timely delivery – 10% (computer software, management)
- Payroll and related employee reporting requirements – 10% (accounting)
- Assist with hiring employees. This process includes completing all of the required paper work for J-1 visas and communicating with foreigners seeking employment (a large number of whom are from Russia). She will also be the

¹ The Petitioner explained that the information given in parentheses (after each percentage of time) refers to the coursework the Beneficiary has taken which directly relate to each function.

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- point of contact for these employees prior to their arrival in the U.S. – (providing them with required government documents, training packet, information about job and [REDACTED] etc.) – 5% (human resources)
- Create and maintain training and procedures manuals – 2.5% (human resources)
 - Develop a business plan for future growth. Once approved, monitor progress and adjust accordingly on an ongoing basis. – 2.5% (budgeting)
 - Develop and maintain an advertising strategy. Research similar businesses and continually adjust company's approach in response to the market and customer base. – 2.5% (economics)
 - Research potential products and product development as needed – 2.5% (economics)
 - Understand and monitor profit and loss in both the retail and wholesale sides of the business. 5% (finance)
 - Maintain sales and expense ledgers for management review. – 5% (accounting)

According to the Petitioner, the position requires a bachelor's degree in human resources management, economics, business, or management.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation.² Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.³

As a preliminary matter, we find that the Petitioner's claim that a bachelor's degree in business is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988), *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.⁴

² Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

³ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

⁴ Specifically, the court explained in *Royal Siam v. Chertoff*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty

Again, the Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation.⁵

A. First Criterion

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we now turn to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Administrative Services Managers" corresponding to Standard Occupational Classification code 11-3011 at a Level I wage.⁷

occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

⁵ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

⁶ All of our references are to the 2016-17 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁷ We will consider the Petitioner's classification of the proffered position at a Level I wage level (the lowest of four assignable wage levels) in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at

The *Handbook* subchapter entitled “How to Become an Administrative Services Manager” states in pertinent part: “A bachelor’s degree is typically required for someone to become an administrative services manager. However, some jobseekers may be able to enter the occupation with a high school diploma. Those with a bachelor’s degree typically study business, engineering, facility management, or information management.”⁸ The *Handbook* also states that “[e]ducational requirements vary by the type of organization and the work performed.”⁹

While this passage of the *Handbook* reports that a bachelor’s degree is typically required for administrative services manager positions, it does not report that the bachelor’s degree must be in any particular specialty. Instead, the *Handbook* reports that typical degree requirements “vary,” and may be in a wide range of fields including the general field of business.¹⁰ The *Handbook* also indicates that a high school diploma may be sufficient. Thus, the *Handbook* does not establish that normally the minimum requirement for entry into these positions is at least a bachelor’s degree in a specific specialty, or its equivalent. The Petitioner has not submitted probative evidence to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

The second criterion presents two, alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

⁸ For additional information regarding the occupational category “Administrative Services Managers,” see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Administrative Services Managers,” <http://www.bls.gov/ooh/management/print/administrative-services-managers.htm> (last visited Apr. 25, 2016).

⁹ *Id.*

¹⁰ As previously discussed, a general degree requirement in the field of business, without further specification, does not establish a position as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor's degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner submitted a description of the proffered position and information regarding its business operations, including a copy of its income tax return for 2014, printouts from its website, and its 2014 buyer's guide. On appeal, the Petitioner asserts that the position includes complex duties such as financial activities, managing the company's website, and researching products.

However, these brief explanations of the proffered position and its constituent job duties are inadequate to establish how the position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree *in a specific specialty*, or its equivalent. For instance, the Petitioner has not adequately explained how the position's duties involving preparation of unspecified financial reports, maintenance of accounts payable and receivable, and payroll processing (which cumulatively comprise 20% of the Beneficiary's time) can only be performed by someone with at least a bachelor's degree *in a specific specialty*, or its equivalent.¹¹ Moreover, the Petitioner has not adequately explained how the position's duty of maintaining the company's website (which comprises another 20% of the Beneficiary's time) reflects a requirement of a bachelor's degree in a specific specialty that is directly related to this and the other duties of the proffered position, or its equivalent. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (describing

¹¹ The Petitioner has not submitted evidence to support its characterization of these duties as "accounting activities."

“a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”).

Furthermore, the Petitioner designated the proffered position as an entry-level position within the occupational category (by selecting a Level I wage on the LCA). This designation, when read in combination with the Petitioner’s job description and the *Handbook’s* account of the requirements for this occupation, further suggests that the particular position is not so complex or unique that the duties can only be performed an individual with bachelor’s degree or higher in a specific specialty, or its equivalent.

In the letter of support, the Petitioner claimed that the Beneficiary is well-qualified for the position, and references her qualifications and related coursework. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses is required.

As the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the duties of the position, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner’s past recruiting and hiring practices, as well as information regarding employees who previously held the position.¹²

The Petitioner, which was established in 2003 (approximately 12 years prior to the filing of the H-1B petition), stated that it has 1 full-time employee, 2 working owners, and 30-40 seasonal employees. The Petitioner explained that the wife of the director of operations previously performed the proffered duties, and submitted evidence of her academic credentials. The Petitioner states that the “degree requirement has been the norm for Petitioner for more than one (1) year.”

¹² To merit approval of the petition under this criterion, the record must also establish that a petitioner’s imposition of a degree requirement is not a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing the Petitioner’s claimed self-imposed requirements, then any individual with a bachelor’s degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 388.

Without additional information and evidence regarding the total number of people the Petitioner has employed to serve in the proffered position throughout its operational history, however, we cannot determine how representative the Petitioner's statements regarding this individual is of the Petitioner's normal recruiting and hiring practices for the position. That is, we cannot find the Petitioner's employment practice for the past year to be representative of its employment practices throughout its entire 12-year history. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995).

Moreover, the Petitioner did not provide the job duties and day-to-day responsibilities for this individual. The Petitioner also did not submit any information regarding the complexity of her job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of this individual was the same or similar to the proffered position. Without more, the Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, it has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).¹³

D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

While the Petitioner provided a more detailed job description in response to the RFE, the description does not establish that the duties are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.¹⁴ The Petitioner has not

¹³ In its RFE response, the Petitioner also referred to the aunt of the director of operations, who is purportedly a certified public accountant and "has been helping out with the financial aspects of the business." The Petitioner did not provide further information and evidence regarding this individual's claimed qualifications and job duties, and does not mention her on appeal. Additionally, the Petitioner submitted copies of the foreign degrees of its two owners. However, the Petitioner does not claim that its two owners perform or have performed the duties of the proffered position. Therefore, we will not further consider the Petitioner's statements and evidence regarding these individuals' qualifications.

¹⁴ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not

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demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.